83-1972

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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

THOMAS SCHULTE, MICHAEL LANG, FLOYD BOHLER, ROY SIMMONS and LINDA HINTON,
Petitioners,

vs.

HOMER E. SAYAD, CHARLES VALIER, THOMAS W. PURCELL, ROBERT F. WINTERSMITH and MAYOR VINCENT C. SCHOEMEHL, JR., comprising the Board of Police Commissioners, St. Louis, Missouri,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE MISSOURI COURT OF APPEALS, EASTERN DISTRICT

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I. QUESTIONS PRESENTED

1.

WHETHER THE BOARD OF POLICE COMMISSIONERS OF THE ST. LOUIS METROPOLITAN POLICE DEPARTMENT, AN ADMINISTRATIVE AGENCY WITHIN THE MEANING OF CHAPTER 536 R.S.Mo., MAY UTILIZE THE INVOLUNTARY AND COERCED STATEMENTS OF PETITIONERS, WHO HAVE BEEN THREATENED WITH EMPLOYMENT DISCHARGE, AS SUBSTANTIVE EVIDENCE DURING STATUTORILY MANDATED POLICE BOARD TRIALS.

II. PARTIES

Petitioners, Thomas Schulte, Michael Lang, Floyd Bohler, Roy Simmons and Linda Hinton are former police officers with the St. Louis Metropolitan Police Department who were terminated by Homer E. Sayad, Charles Valier, Thomas W. Purcell, Robert F. Wintersmith and Mayor Vincent E. Schoemehl, Jr., who acted in their capacities as members of the Board of Police Commissioners, for allegedly violating certain of the rules and regulations of the St. Louis Metropolitan Police Department.

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the Board of Police Commissioners, St. Louis, Missouri,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE MISSOURI COURT OF APPEALS, EASTERN DISTRICT

Petitioners, Thomas Schulte, Michael Lang, Floyd Bohler, Roy Simmons and Linda Hinton pray that a Writ of Certiorari issue to the Supreme Court of the State of Missouri to review the findings of fact, conclusions of law, decision and order of the Board of Police Commissioners of the St. Louis Metropolitan Police Department.

V. OPINIONS BELOW

The Findings of Fact, Conclusions of Law, Decision and Order of the Board of Police Commissioners of the St. Louis Metropolitan Police Department is appended hereto as Appendix A. The opinions of the Circuit Court of the City of St.

Louis and Missouri Court of Appeals, Eastern District are appended as Appendix B and Appendix C. The Order of the Court of Appeals denying Petitioners' Motion for Rehearing or in the alternative transfer to the Missouri Supreme Court is appended hereto as Appendix D. Finally, the Order of the Missouri Supreme Court denying petitioners' Motion for Transfer is attached as Appendix E.

VI. JURISDICTION

The Judgment of the Missouri Court of Appeals was entered on January 31, 1984, affirming the action of the Circuit Court of the City of St. Louis which affirmed the decision of the Board of Police Commissioners. The Missouri Supreme Court denied petitioner's Motion for Transfer on April 16, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(3) and United States Supreme Court Rule 20.

VII. CONSTITUTIONAL PROVISIONS

Petitioners raise claims with regard to their rights under the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

Petitioners also raise claims with regard to Sections 84.120 and 84.150 of the revised statutes of the State of Missouri insofar as those statutes apply to the Fourth, Fifth, Sixth and Fourteenth Amendments. Section 84.120 R.S.Mo. provides in pertinent part as follows:

> "***The patrolmen and turnkeys hereafter appointed shall serve while they shall faithfully perform their duties and possess mental and physical ability and be subject to removal only for cause after a hearing by the boards, who are hereby invested with the exclusive jurisdiction in the premises".

Section 84.150 R.S.Mo. also provides in pertinent part:

> "***The officers of the police force shall have commissions issued to them by the boards of police commissioners and those heretofore and those hereafter commissioned shall serve so long as they shall faithfully perform their duties and possess the necessary mental and physical ability, and be subject to removal only for cause after a hearing by the board, who are hereby invested with exclusive jurisdiction in the premises".

VIII. STATEMENT OF THE CASE

Petitioners Thomas Schulte, Michael Lang, Floyd Bohler, Roy Simmons and Linda Hinton were at all times material to this action, employed as police officers with the St. Louis Metropolitan Police Department. On September 22, 1981, a hearing before the Board of Police Commissioners was held to determine whether petitioners had violated certain provisions of the police manual.

The hearing officer was John J. Riley and Col. Robert F. Wintersmith was also present as the required representative for the Board of Police Commissioners. On April 23, 1982, the Board entered its Decision, holding that Petitioner Schulte was guilty of charges and specifications numbered I, II, III, IV, and Petitioners Lang and Hinton were guilty of charges and specifications numbered I, II and III, Petitioner Bohler was guilty of charges and specifications numbered I, II, III and IV and Petitioner Simmons was guilty of charges and specifications numbered I, II, III and IV, and consequently the Board ordered that all appellants be dismissed from the St. Louis Police Department.[1]

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[1] All petitioners were charged with violating Rule 9, Section 9.001 (h) and Rule 3, Section 3108 (d). Rule 9, Section 9.001 (h) provides, *inter alia,* that drinking of alcoholic beverages while on duty is prohibited. Rule 3, Section 3.108 (d) provides, *inter alia,* that on-duty of-

All transcript references in this petition will pertain to the trial held before the Board of Police Commissioners. The facts giving rise to the present action arose from alleged events occurring from 11:00 p.m. August 19, 1980 to the end of that shift on the morning of August 20, 1982. Petitioners were all assigned to the 6th District. The Department alleged that each of petitioners left their assigned beats during their watch and went to an area known as the Small Arms Plant, where they consumed alcohol. Moreover, the Department claimed that petitioner Schulte was assigned to the mail run that night (Tr. 38) and without permission assigned it to someone else although Sergeant Cheney stated that he did not specifically order Schulte to personally do the mail run (Tr. 60).

Eash petitioner suspected of violating certain Department rules and regulations, was ordered by a superior officer to answer questions about the alleged events or be subject to Department charges, including dismissal from the Department (Tr. 67, 69, 78-79, 80, 88, 100, 133-134, 184). Each appellant, under the threat of disciplinary action which included dismissal, involuntarily gave the Department a statement (Tr. 61, 76, 83, 85, 88, 98). Those statements, marked as Exhibits 8, 9, 10, 11, 12 and 13 were received in evidence after petitioners' motions to suppress statements were overruled (Tr. 118). Moreover, Captain Julian Boyd, Commander of Internal Affairs Division, testified that he told the officers that if they answered questions, they would not lose their jobs (Tr. 115).

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ficers shall constantly patrol their beat, except on special assignment, and shall not lounge, loaf or gather with others at any place. Officers Lang, Bohler, Hinton and Simmons were charged with violating Rule 3, Section 3.108 (b), which provides, *inter alia,* that on-duty officers shall confine their patrol within the limits of their beat, except in the arrest of a prisoner or other necessary absence until being relieved at the end of a tour of duty. Officers Schulte and Simmons were charged with violating Rule 7, Section 7.010 (d), which provides, *inter alia,* that an officer's conduct shall not be contrary to the good order and discipline of the Department. Officer Bohler was charged with violating Rule 9, Section 9.010 (r), which provides, *inter alia,* that improper performance of duty by an officer is prohibited.

Dalphia Young, the court reporter for Internal Affairs, testified that she compared each transcript of the statements with her shorthand notes (Tr. 111, 113), however petitioners brought to her attention numerous errors found in the transcripts (Tr. 113-114). Ms. Young also swore she was present at Officer Lang's statement (Tr. 136), then later testified she was not (Tr. 137). The interrogating officers Boyd (Tr. 178-179), Monohan (Tr. 81) and Haley (Tr. 101-102, 184), each testified that they did not know if the statements of those petitioners they interrogated were verbatim accounts of questions asked and answers given.

The only independent evidence concerning the alleged events that was produced by the Department was Sergeant Walter Cheney testifying that he responded to a call from the Small Arms Compound made by petitioners Lang and Schulte. They radioed Sergeant Cheney because they had two females who wanted to make a complaint (Tr. 33-36). The Department also produced a Lafayette Collins who testified that on the night in questions he accompanied two females to the Small Arms Plant where he drank beer with some policemen present. However, he did not know who the officers were (Tr. 123-125) and he did not see any policemen drink beer (Tr. 127).

Sergeant Massey testified that the petitioners, whom he has supervised since 1980, have always acted positively (Tr. 140) and that Lang had received a medal from the Department (Tr. 142). Sergeant Jennings testified that petitioners Lang, Schulte and Bohler were good police officers (Tr. 150) and Sergeant Grove testified that the petitioners were dedicated policemen.

Petitioners each were found guilty of the charges above noted and dismissed from the Department. Thereafter, review of the Police Board Hearing was held by the Circuit Court in the City of St. Louis. That Court as well as the Missouri Court of Appeals, Eastern District, affirmed the Police Board's decision. The Missouri Supreme Court denied petitioners' motion to transfer.

IX. REASONS FOR ALLOWING THE WRIT

Whether The Board Of Police Commissioners Of The St. Louis Metropolitan Police Department, An Administrative Agency, Within The Meaning Of Chapter 536 R.S.Mo., May Utilize The Involuntary And Coerced Statements Of Petitioners, Who Have Been Threatened With Employment Discharge, As Substantive Evidence During Statutorily Mandated Police Board Trials.

This Court has on prior occasion taken the opportunity to define the rights and duties of police officers in connection with intradepartmental investigations and specifically, statements made by police officers in connection with those investigations. See *Garrity v. New Jersey,* 385 U.S. 493 (1967); *Gardner v. Broderick,* 392 U.S. 273 (1968); and *Spevak v. Klein,* 385 U.S. 511 (1967). However, this Court has yet to decide the issue of what use if any the various police departments may make of these statements, particularly in light of the manner and method by which most are obtained. Specifically, the instant case solicits an answer to the questions of whether statements obtained under threat of loss of employment can be utilized as substantive evidence at a statutorily mandated police board trial.

As has been well established by this Court, "...policemen, like teachers and lawyers, are not relegated to a watered-down version of constitutional rights." *Garrity v. New Jersey,* 385 U.S. 493, 500 (1967). Yet the actions of the St. Louis Police Department and the Police Board in the instant case went beyond drastically watering down petitioners' constitutional rights and instead, drowned petitioners' most basic fundamental rights to due process of law. Petitioners were forced to make statements or face losing their jobs. Thereafter, those same statements were used as substantive evidence at a trial after the Board overruled each of the motions to suppress statements, all in direct violation of their Fourth, Fifth, Sixth and Fourteenth

Amendment Constitutional guarantees and in circumvention of their rights to due process and equal protection as afforded them by the statutes of this state.

The undisputed evidence, which will be discussed in great detail hereinafter, demonstrates that all petitioners, who were suspects in the Police Department's investigation, were ordered by a superior to make a statement concerning the alleged events, which were the subject of the investigation, or be subject to disciplinary action including dismissal should they refuse or fail in this regard. It was on that basis and against that background that each officer involuntarily gave the Department a statement (Tr. 67-73, 77-82, 86-88, 99-100).

Under Section 84.120 R.S.Mo. 1943 and Section 84.150 R.S.Mo. 1978, a police officer in the City of St. Louis is statutorily entitled to a hearing as a condition precedent to the imposition of any discipline during which cause must be demonstrated. Those statutes provide in pertinent part:

> "...The officers of the police force shall have commissions issued to them by the boards of police commissioners, and those heretofore and those hereafter commissioned shall serve so long as they faithfully perform their duties and possess the necessary mental and physical ability, *and be subject to removal only for cause after a hearing by the board...,*" (emphasis supplied).

It has been unassailably established in the State of Missouri that the "reception of evidence in administrative hearings should be governed by the same rules as are followed in the Courts." *Ellis v. State Department of Public Health & Welfare,* 277 S.W. 2d 331, 335 (Mo. App. 1955), *affirmed,* 285 S.W. 2d 684 (Mo. 1956). Due process requires that administrative hearings must afford parties a fair hearing and contain rudimentary elements of fair play under the Fourteenth Amendment to the United States Constitution. *Tonkin v. Jackson County Merit System Commission,* 559 S.W. 2d 25 (Mo. App. 1980). Fur-

ther, under the Fifth and Fourteenth Amendments, the doctrine of a due process "fair hearing" is applicable to hearings involving personnel or disciplinary matters. *Tullock v. City of St. Charles,* 602 S.W. 2d 860 (Mo. App. 1980). Quoting *Jones v. State Dept. of Public Health & Welfare,* 354 S.W. 2d 37, 39-40 (Mo. App. 1962) the Missouri Court of Appeals reiterated the definition of "fair hearing".

> "An administrative proceeding will not be considered a 'fair hearing' if it lacks the rudimentary elements of 'fair play' embraced within the requirements of due process .... It cannot be said that there has been a 'fair hearing' if practices are indulged in or the hearing is conducted in a manner leading to the conclusion that a denial of justice may have resulted."

supra, at 862-863. The courts are entrusted with the task of determining whether litigants in administrative proceedings have in fact been afforded their constitutionally mandated fair hearing. In *Perez v. Webb,* 533 S.W. 2d 650 (Mo. App. 1976), the Missouri Appellate Court set forth the scope of review as respects administrative decisions. Perez teaches that "(g)enerally, its (the Circuit Court's) function is to determine primarily whether the decision was supported by competent and substantial evidence upon the whole record; whether the administrative act was arbitrary, capricious or unreasonably; and whether an abuse of discretion appears ...." *Perez, supra,* at 654. Furthermore, in *MacAllister v. Priest,* 422 S.W. 2d 650, 658 (Mo. 1968), the Missouri Supreme Court delineated the parameters of the substantial and competent evidence upon the whole record test, stating that:

> "At the outset, we recognize the type of judicial review contemplated by Section 536.140 of the Administrative Procedure Act. The action of the Police Board here being reviewed involves the exercise of discretion and it is too well settled to require citation that neither the Trial Court nor

> this Court may substitute its judgment on the evidence for that of the Board. The inquiry by the Circuit Court and that of this Court is limited to ascertaining whether the Board could have reasonably made its findings and reached its result upon consideration of all the evidence before it and whether the Board's decision was clearly contrary to the overwhelming weight of the evidence. Quoting *Johnson v. Priest,* 398 S.W. 2d 33, 35 (Mo. App. 1965).

An examination of the types of statements that were made by the petitioners here as well as the history of the law regarding coerced statements, together with the rationale for their inadmissibility will lead to the conclusion that the introduction into evidence of petitioners' statements during their statutorily mandated due process hearing was a denial of their constitutionally guaranteed rights to fair due process, is clearly improper and erroneous in the instant case, and does not meet the test of substantial and competent evidence.

As early as 1792, the courts began to recognize the voluntariness doctrine for statements. *Commonwealth v. Dillon,* 4 Dallas 116 (1792), cited in O. Stephens, *The Supreme Court and Confessions of Guilt,* 23 (1973). In 1897, this Court found that the Fifth Amendment right against self-incrimination required the reversal of a murder conviction due to the receipt in evidence of a coerced confession. The reasoning was thus:

> "* * * (A) confession, in order to be admissible, must be free and voluntary; that is, must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence .... A confession can never be received in evidence where the prisoner has been influenced by any threat or promise; for the law cannot measure the force of the influence used, or decide upon its effect upon the mind of the prisoner, and therefore excludes the declaration if any degree of influence has been exerted."

Bram v. United States, 168 U.S. 532, 542 (1897). Repeatedly, this Court has shown its abhorrence of coerced confessions and thus automatically reversed many criminal convictions. See *Brown v. Mississippi,* 297 U.S. 278 (1936); *Ashcraft v. Tennessee,* 322 U.S. 143 (1944); *Payne v. Arkansas,* 356 U.S. 560 (1958); *Chaptman v. California,* 386 U.S. 18 (1967). As stated in *Garrity v. New Jersey, supra,* at 496-497, coercion can be supplied through threats, promises or inducements, since coercion can be psychological as well as physical.

The same reasoning for excluding coerced statements in criminal cases should apply to coerced statements in police department statutorily mandated due process hearings. A coerced statement is a coerced statement is a coerced statement. If a statement, such as those given by petitioners here, was involuntary and a result of coercion, then that statement has all the earmarks of unreliability. A coerced statement, which by its very nature is inherently unreliable, remains unreliable when it is offered into evidence at a police board trial where the rules of evidence and the constitutional principles of due process apply. Such statements should not be admitted in evidence at that trial as their admission destroys all due process and equal protection rights and thus renders meaningless the statutory due process requirement of Section 84.120 and 84.150.

The Commonwealth Court of Pennsylvania decided this exact issue in *DiCiacco v. Civil Service Commission, et al.,* 389 A. 2d 703 (1978). In *DiCiacco,* four policemen had been charged with violations of the Department's rules and each had been dismissed on the basis of his own statements in response to interrogation by other police officers. The court there found that the issue in question was only preserved for appeal as to two of the officers. Officer Kieffer had made a statement in which he admitted retaining some narcotics in violation of the Department's rules after he was told: "This is an official investigation under the provisions of the Philadelphia Home Charter, Section

10-110[2], you are required to cooperate fully and answer all questions." *Id.* at 707. The Court found this statement inadmissible where the statement was made immediately after Section 10-110 was given as it required a waiver of Fifth Amendment rights under the threat of being fired and thus was coerced and constitutionally defective.

As was recognized in *DiCiacco* at 708, although *Gardner v. Broderick,* 392 U.S. 273 (1968), allows a police department to demand that its policemen answer questions specifically and narrowly related to the performance of official duties or face dismissal, it does not stand for the proposition that the police department can then use these forced and involuntary statements as a basis on which to fire an individual at a Board hearing. The *DiCiacco* court quoting from *Gardner* at 279 stated that "the mandate of the great privilege against self-incrimination does not tolerate the attempt, regardless of its ultimate effectiveness, to coerce a waiver of the immunity it confers on penalty of loss of the employment. "*Id.* at 708". This language strongly suggests that, since it is the attempt to coerce a waiver of the Fifth Amendment right against self-incrimination that is constitutionally infirm, a statement made under these circumstances should be excluded.

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[2] "If any officer or employee of the City shall willfully refuse or fail to appear before any court, or before the Council, or any committee thereof, or before any officer, department, board, commission or body authorized to conduct any hearing or inquiry, or having appeared, shall refuse to testify or to answer any questions related to the affairs or government of the City of the conduct of any City officer or employee on the ground that his testimony or answers would tend to incriminate him, or shall refuse to waive immunity from prosecution on account of any matter about which he may be asked to testify before such court or at any such hearing or inquiry, he shall forfeit his office or position, and shall not be eligible thereafter for employment to any position in the City service."

This Court clarified this evidentiary exclusionary point in *Lefkowitz v. Turley,* 414 U.S. 70 (1973). The statute there provided that if a contractor refused to answer questions or to waive immunity from prosecution when called to testify concerning his contracts with the State, his existing constracts could be cancelled and he would be disqualified from further dealings with the State for a period of time. Faced with the case of two architects who had refused to sign waivers of immunity, the Court held that the statute in issue was unconstitutional, and further commented on the admissibility of any statement made under these circumstances: "(A)nswers elicited upon the threat of the loss of employment are compelled and inadmissible in evidence." 414 U.S. at 85. In *Malloy v. Hogan,* 378 U.S. 1, 8 (1964), the Supreme Court said:

> "The Fourteenth Amendment secures against state invasion the same privilege that the Fifth Amendment guarantees against federal infringement - the right of a person to remain silent unless he chooses to speak in the unfettered exercise of his own will, and to suffer no penalty ... for such silence."

In *Spevack v. Klein,* 385 U.S. 511, 515 (1967), this Court elaborated on the above principle by stating that "penalty" is not confined to imprisonment or fine, but includes the "imposition of any sanction which makes the assertion of the Fifth Amendment 'costly'." (citations omitted). In *Spevack,* the threat of disbarment, loss of professional reputation, standing and of livelihood were deemed powerful forms of compulsion to make a lawyer relinquish his Fifth Amendment. *Id.,* at 516.

This Court has further supported this position, by holding that testimony given in response to a grant of legislative immunity is the essence of coerced testimony. *N.J. v. Portash,* 440 U.S. 450 (1979). In *Portash,* the court found that in such cases there is no question whether physical or psychological pressures overrode defendant's will. There, the witness was told to talk or

face the government's coercive sanctions, (a conviction for contempt). Additionally, the Wisconsin Supreme Court recognized that the coercive character of the police station is even clearer to a police officer who is familiar with the techniques of police interrogation, where police officers have their property rights in their employment. *Oddsen v. Board of Fire & Police Commissioners,* 321 N.W. 2d 161, 169 (1982).

Moreover, the Board here went far beyond the limitations as set forth in *Garrity v. New Jersey,* 385 U.S. 493 (1967) and *Gardner v. Broderick,* 392 U.S. 273 (1968). *Gardner* seemingly allows a department to demand that its policemen answer questions specifically, narrowly and directly related to the performance of official duties or face dismissal. 392 U.S. at 278. However, *Gardner* does not in any respect stand for the proposition that the police department can then utilize these forced, involuntary statements as the basis upon which to fire an individual at a statutorily mandated board meeting. *Gardner* stops far short of that. In that case, *Gardner* was given an administrative hearing and thereafter discharged for failing to sign a waiver of immunity prior to testifying before a grand jury and because he did not have immunity, refused to testify at all. 392 U.S. at 274-275. While this Court stated that *Gardner* could be forced to answer questions concerning his duties or face dismissal, it did not say that the department could take this statement into the hearing and use it as substantive evidence upon which the department would meet its burden of proof and which would form basis upon which to fire the accused officer. Similarly, in the instant case, although petitioners may have had to make the statements to Internal Affairs under *Gardner,* they resolutely maintain that there is no authority for the Department to then take these coerced statements to the hearing as substantive evidence in order to fire them. The use of the statements in this manner clearly places a policeman "between the rock and the whirlpool", which *Garrity,* 385 U.S. at 566, labeled as an impermissive use of a statement because any statement given in that situation is one inherent of duress and coercion.

In the case at bar, as in *Spevack, supra* and *Gardner, supra,* petitioners were faced with the threat of loss of employment and livelihood, professional standing and reputation. These are powerful enough forms of compulsion to induce a policeman to give a statement. Although it is doubtful that the Board would challenge the voluntariness issue, nonetheless, it has been clearly established in the record that these statements were unquestionably made involuntarily. Sergeant Monohan stated that Officer Schulte as a suspect in the investigation was ordered to answer (Tr. 79-80). Captain Boyd testified that Officers Simmons and Hinton were likewise ordered to answer and that they did not answer voluntarily (Tr. 88). Also, within the statement of Officer Bohler, he stated that he was giving the statement involuntarily. (Police Department Exhibit 8). The testimony of Sergeant Monohan with respect to the statement of Officer Lang is representative of the involuntary and coerced nature of that statement. His testimony is in pertinent part as follows:

> "Q. So, that if I understand all of this correctly and if I understand this "Advise of Rights," Officer Lang was ordered to answer your questions; is that right?
>
> A. Yes, sir.
>
> Q. And if he didn't answer your questions, he could be fired; is that right?
>
> A. Yes, sir.
>
> Q. And then based upon that order and based upon your telling him that he could be fired if he didn't answer the questions, you commenced to questioning him; is that right?
>
> A. Yes, sir."

(Tr. 69). Similar testimony regarding Officer Schulte's statement can be found on pages 78-79 of the Board trial transcript, Officers Simmons and Hinton on page 88 and Officer Bohler on page 100.

Additionally, Captain Julian Boyd, Commander of Internal Affairs Division, promised petitioners that they would not be fired if they made statements (Tr. 95). Certainly that promise as well qualifies as inducement of the highest order. There can be no rational conclusion but that the statements made by each petitioner were given involuntarily, under the threat of dismissal for refusing to make a statement, with the promise that they would not lose their jobs if they gave statements and are therefore coerced, involuntary statements. As such, the Board's decision should be overturned as the admission into evidence of these coerced, involuntary statement was a denial of petitioners' rights of due process, equal protection, a fair hearing and resulted in a violation of their Fourth, Fifth and Fourteenth Amendment rights.

For all of the foregoing reasons, this Court's Writ of Certiorari should issue to finally determine what use, if any, the various police and law enforcement agencies may make of these statements during administrative trials or hearings.

CONCLUSION

For the foregoing reasons, Writ of Certiorari should issue to review the judgment and opinion of the Missouri Supreme Court, the Missouri Court of Appeals, Eastern District, the Circuit Court of the City of St. Louis and the findings of face, conclusions of law, decisions and order of the Board of Police Commissioners of the St. Louis Metropolitan Police Department.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was mailed first class, postage prepaid to Mr. David O. Danis, Attorney for Respondents, 8850 Ladue Road, St. Louis, MO 63124, this 30th day of May, 1984.

APPENDIX

APPENDIX A

BEFORE THE BOARD OF POLICE COMMISSIONERS OF
THE METROPOLITAN POLICE DEPARTMENT
CITY OF ST. LOUIS

File No: 80/446

In the Matter of: St. Louis Metropolitan Police Department,
Plaintiff,

vs.

Police Officer Thomas Schulte,
Defendant.

DECISION
RECOMMENDED STATEMENT

This matter came up for hearing in the Board Room of the Police Headquarters Building on September 22, 1981 before MR. JOHN J. RILEY, Hearing Officer duly appointed by the Board of Police Commissioners, and COLONEL ROBERT F. WINTERSMITH, Member of the Board of Police Commissioners, upon charges and specifications previously filed against POLICE OFFICER THOMAS SCHULTE and said Officer's plea of not guilty to said charges and specifications.

Both parties received reasonable notice of the issues involved and the time and place for hearing. Both parties were permitted timely process for the production of witnesses and documents. Each party was represented by counsel. At the hearing hereof, both parties presented oral and documentary evidence. During the hearing of the matter herein, the Department dismissed Charge 5 and the specification thereto pending against OFFICER SCHULTE. At the conclusion of all of the evidence, the entire matter was taken under submission for consideration by

Hearing Officer RILEY. Subsequently, the Hearing Officer submitted Suggested Findings of Fact and Recommended Conclusions of Law in connection with the four charges and specifications thereto pending against POLICE OFFICER SCHULTE to the Board. Thereafter, said Findings and Recommendation, the Charges and Specifications, and the full transcript, including all documentary evidence, of the proceedings were reviewed and duly considered by all of the Members of the Board of Police Commissioners. Upon due deliberation and consideration of the charges, the specifications thereto; the plea thereto and the proof adduced, the Board in reviewing the record as a whole, now makes its final decision, together with Findings of Fact, Conclusions of Law and its Order as set out herein below.

RECOMMENDED FINDINGS OF FACT

1. At all times mentioned in this matter, OFFICER THOMAS SCHULTE held a position of Police Officer with the St. Louis Metropolitan Police Department.

2. On August 19, 1980 POLICE OFFICER SCHULTE was assigned to the 6th Police District, his tour of duty consisting of the third or night watch.

3. On the date and time stated above, OFFICER SCHULTE was assigned to car #628.

4. Sometime prior to the commencement of his tour of duty (11:00 p.m. on August 19, 1980) OFFICER SCHULTE obtained a quantity of beer and placed it in an area commonly known as "the small arms compound".

5. At various times during his assigned tour of duty as described above, POLICE OFFICER SCHULTE consumted a portion of the beer he had obtained prior to reporting for duty. Said beer being consumed by the Officer in the area commonly known as "the small arms compound".

6. While on his tour of duty as described hereinabove, POLICE OFFICER SCHULTE, in the general vincinity of Goodfellow and West Florissant Avenue in the City of St. Louis consumed some quantity of beer.

7. The area commonly known as "the small arms compound" is not within the geographic boundaries of OFFICER SCHULTE's assignment during his tour of duty on August 19/August 20, 1980.

8. On various occasions during his assigned watch on August 19/August 20, 1980, OFFICER THOMAS SCHULTE met and gathered with other police officers and non-Department personnel in the area commonly known as "the small arms compound".

9. SGT. WALTER CHENEY was POLICE OFFICER THOMAS SCHULTE's immediate supervisor during said Police Officer's tour of duty on August 19/August 20, 1980.

10. POLICE OFFICER THOMAS SCHULTE's duties on the above dates included picking up Department mail from Districts 6, 7, and 8, and delivering said mail to the Headquarters Building at 1200 Clark Avenue.

11. Sometime after 4:30 a.m. on August 20, 1980 POLICE OFFICER SCHULTE requested and instructed probationary POLICE OFFICER ROY SIMMONS to take POLICE OFFICER SCHULTE's vehicle and perform the mail duties assigned to him, OFFICER SCHULTE.

12. Probationary Officer SIMMONS performed said duties without instruction from any member of the Department other than OFFICER SCHULTE.

13. At no time did SGT. CHENEY give permission to OFFICER SCHULTE to assign his mail run duties to Probationary Officer SIMMONS.

14. Rule 7, Section 7.010(d) of the Police Manual published July, 1970 by the Board of Police Commissioners prohibits "conduct contrary to the good order and discipline of the Department".

15. Rule 9, Section 9.001(h) of the Police Manual published July, 1970 by the Board of Police Commissioners prohibits "drinking of alcoholic beverages of any kind while on duty".

16. Rule 3, Section 3.108(d) of the Police Manual published July, 1970 by the Board of Police Commissioners provides that on-duty officers "...shall constantly patrol his beat, except while on special assignment. He shall not lounge, loaf, or gather with others at any place".

SUGGESTED CONCLUSIONS OF LAW

1. At all times mentioned in the Findings of Fact, the Defendant lawfully occupied the rank of Police Officer with the St. Louis Metropolitan Police Department and as a result thereof was within the lawful discipline of and government of the Department.

2. The Board of Police Commissioners of the City of St. Louis, Missouri, is possessed of the lawful power to make such rules and regulations consistent with law, for the government and discipline of the St. Louis Metropolitan Police Department.

3. Pursuant to this authority, the Board has promulgated and published rules of conduct in the Police Manual. Further, pursuant to that authority, the Board has promulgated and published in said Manual, Rule 7, setting forth complaint and disciplinary procedures and providing for the hearing of charges and specifications against members of the police force.

4. The hearing of the Charges and Specifications pending against POLICE OFFICER SCHULTE was lawfully conducted pursuant to and in accordance with said Rule 7 of the Police Manual, and in accordance with Chapter 536 of the Revised Statutes of the State of Missouri.

5. As a result of the Defendant's aforesaid status and the aforesaid powers of the Board, the Board is possessed of the right to apply its reasonable judgment and discretion to the evidence adduced at the hearing of the matter herein and make Findings of Fact and enter a Judgment based thereon.

6. The Board has the right and power to affect the status of the Defendant by assessing (the punishment of....)

7. The Board was authorized and empowered to issue timely notice of the hearing hereof, to conduct the hearing, and to take and hear any and all evidence by the parties and to utilize all competent and material evidence in rendering its decision.

8. The Board, as an administrative agency of the State Government, has the right to apply its reasonable judgment and discretion, based upon its experience in the government and administration of the Department, and the evidence adduced at the trial of the Defendant herein, in determining the proper disposition of the status of the Defendant.

9. The Defendant was and is guilty of Charges 1, 2, 3, and 4 of violating Rules 7, Section 7.010(d), Rule 9, Section 9.001(h), and Rule 7, Section 7.010(d) of the Police Manual, all as set out in Charges 1, 2, 3 and 4 and the Specifications thereto.

SUGGESTED ORDER

The Findings of Fact and Conclusions of Law as set out hereinabove considered, the Board of Police Commissioners of the City of St. Louis, Missouri does hereby decide that the Defendant, POLICE OFFICER THOMAS SCHULTE is guilty of violation of Rule 7, Section 7.010(d) of the Police Manual as set out in Charge 1 and its Specification; that said Officer is guilty of violation of Rule 9, Section 9.001(j) of the Police Manual as set out in Charge 2 and Specification 1 and 2 of said Charge; that said Officer is guilty of violation of Rule 3, Section 3.108(d) of the Police Manual as set out in Charge 3 and its

Specification; that said Officer is guilty of violation of Rule 7, Section 7.010(d) of the Police Manual as set out in Charge 4 of and its Specification, and as a consequence thereof, does hereby adjudge and accordingly order that said Defendant, POLICE OFFICER THOMAS SCHULTE, for good and sufficient reason (here set out punishment).

This Order shall be effective upon the filing hereof, this ____ day of _____, 1982.

BOARD OF POLICE COMMISSIONERS
OF THE CITY OF ST. LOUIS, MISSOURI

By:_____

By:_____

By:_____

By:_____

ATTEST:

_____
Secretary to the Board

BEFORE THE BOARD OF POLICE COMMISSIONERS OF
THE METROPOLITAN POLICE DEPARTMENT
CITY OF ST. LOUIS

File No. 80/446

In the Matter of St. Louis Metropolitan Police Department,
Plaintiff,

vs.

Police Officer Floyd Bohler,
Defendant.

DECISION
RECOMMENDED STATEMENT

This matter came up for hearing in the Board Room of the Police Headquarters Building on September 22, 1981 before MR. JOHN J. RILEY, Hearing Officer duly appointed by the Board of Police Commissioners, and COLONEL ROBERT F. WINTERSMITH, Member of the Board of Police Commissioners, upon charges and specifications previously filed against POLICE OFFICER FLOYD BOHLER and said Officer's plea of not guilty to said charges and specifications.

Both parties received reasonable notice of the issues involved and the time and place for hearing. Both parties were permitted timely process for the production of witnesses and documents. Each party was represented by counsel. At the hearing hereof, both parties presented oral and documentary evidence. At the conclusion of all of the evidence, the entire matter was taken under submission for consideration by Hearing Officer RILEY. Subsequently, the Hearing Officer submitted Suggested Findings of Fact and Recommended Conclusions of Law in connection with the four charges and specifications thereto pending against POLICE OFFICER BOHLER. Thereafter, said Fin-

dings and Recommendation, the Charges and Specifications, and the full transcript, including all documentary evidence, of the proceeding were reviewed and duly considered by all of the Members of the Board of Police Commissioners. Upon due deliberation and condsideration of the charges, the specifications thereto; the plea thereto and the proof adduced, the Board in reviewing the record as a whole, now makes its final decision, together with the Findings of Fact, Conclusions of Law and its Order as set out herein below.

RECOMMENDED FINDINGS OF FACT

1. At all times mentioned in this matter, POLICE OFFICER FLOYD BOHLER held a position of Police Officer with the St. Louis Metropolitan Police Department.

2. On August 19/August 20, 1980, POLICE OFFICER FLOYD BOHLER was assigned to the 6th Police District in the City of St. Louis, his tour of duty commencing at 11:00 p.m. on August 19, 1980 and terminating at 7:00 a.m. on August 20, 1980.

3. POLICE OFFICER BOHLER's assigned beat on the above dates at the above time was beat #629 within the said 6th Police District of the City of St. Louis, which beat consists of the area bounded by Bircher Blvd., and West Florissant Blvd.; Kingshighway and Emerson Streets in the City of St. Louis.

4. At all times herein described, LINDA HINTON was a probationary Police Officer with the St. Louis Metropolitan Police Department.

5. On the date and at the time described hereinabove, POLICE OFFICER BOHLER was assigned as Probationary Police Officer HINTON's Training Officer.

6. At some time between 2:00 a.m. and 6:00 a.m. on August 20, 1980, POLICE OFFICE BOHLER consumed a quantity of beer in the area generally known as "the small arms compound".

7. At some time between 2:00 a.m. and 6:00 a.m. on August 20, 1980, POLICE OFFICER BOHLER met with and gathered with other members of the Metropolitan Police Department and persons who were not members of the Department in the area known as "the small arms compound".

8. At some time on August 20, 1980, during his tour of duty, POLICE OFFICER FLOYD BOHLER was absent from his assigned beat without permission, justification or excuse.

9. At some time of the early morning hours of August 20, 1980 POLICE OFFICER BOHLER drove his police vehicle with Probationary Officer HINTON, as passenger, out of his assigned area, to the area commonly known as "the small arms compound" and engaged in the activities outlined hereinabove.

10. Rule 9, Section 9.001(h) of the Police Manual, published July, 1970 by the Board of Police Commissioners, in applicable part prohibits "drinking of alcoholic beverages of any kind while on duty".

11. Rule 3, Section 3.108(d) of the Police Manual, published July, 1970 by the Board of Police Commissioners, provides in applicable part, that an on-duty officer: "shall consistently patrol his beat, except when on special assignment. He shall not lounge, loaf, or gather with others at any place".

12. Rule 3, Section 3.108(b) of the Police Manual, published July, 1970 by the Board of Police Commissioners, states in applicable part that an on-duty officer: "...shall confine his patrol within the limits of his beat, except in the arrest of a prisoner or other necessary absence, until the time fixed for the expiration of his tour of duty and he is properly relieved."

13. Rule 9, Section 9.001(r) of the Police Manual, published July, 1970 by the Board of Police Commissioners, in applicable part prohibits "improper performance of duty".

SUGGESTED CONCLUSIONS OF LAW

1. At all times mentioned in the Findings of Fact, the Defendant lawfully occupied the rank of Police Officer with the St. Louis Metropolitan Police Department and as a result thereof was within the lawful discipline of and government of the Department.

2. The Board of Police Commissioners of the City of St. Louis, Missouri, is possessed of the lawful power to make such rules and regulations consistent with law, for the government and discipline of the St. Louis Metropolitan Police Department.

3. Pursuant to this authority, the Board has promulgated and published rules of conduct in the Police Manual. Further, pursuant to that authority, the Board has promulgated and published in said Manual, Rule 7, setting forth complaint and disciplinary procedures and providing for the hearing of charges and specifications against members of the police force.

4. The hearing of the Charges and Specifications pending against POLICE OFFICER FLOYD BOHLER was lawfully conducted pursuant to and in accordance with said Rule 7 of the Police Manual, and in accordance with Chapter 536 of the Revised Statutes of the State of Missouri.

5. As a result of the Defendant's aforesaid status and the aforesaid powers of the Board, the Board is possessed of the right to apply its reasonable judgment and discretion to the evidence adduced at the hearing of the matter herein and make Findings of Fact and enter a Judgment based thereon.

6. The Board has the right and power to affect status of the Defendant by assessing (the punishment of...).

7. The Board was authorized and empowered to issue timely notice of the hearing hereof, to conduct the hearing, and to take and hear any and all evidence by the parties and to utilize all competent and material evidence in rendering its decision.

8. The Board, as an administrative agency of the State Government, has the right to apply its reasonable judgment and discretion, based upon its experience in the government and administration of the Department, and the evidence adduced at the trial of the Defendant herein, in determining the proper disposition of the status of the Defendant.

9. The Defendant, POLICE OFFICER FLOYD BOHLER, was an is guilty of Charges 1, 2, 3 and 4 of violating Rule 9, Section 9.001(h); Rule 3, Section 3.108(d); Rule 3, Section 3.108(d); and Rule 9, Section 9.001(r) of the Police Manual, as set out in Charges 1, 2, 3, and 4 and the Specifications thereto.

SUGGESTED ORDER

The Findings of Fact and Conclusions of Law aforesaid considered, the Board of Police Commissioners of the City of St. Louis, Missouri, does hereby decide that the Defendant, POLICE OFFICER FLOYD BOHLER, is guilty of violation of Rule 9, Section 9.001(h) of the Police Manual as set out in Charge 1 and its Specification; that said Officer is guilty of violation of Rule 3, Section 3.108(d) of the Police Manual as set out in Charge 2 and its Specification; that said Police Officer is guilty of violation of Rule 3, Section 3.108(d) of the Police Manual as set out in Charge 3 and its Specification; and is guilty of violation of Rule 9, Section 9.001(r) of the Police Manual as set out in Charge 4 and its Specification and as a consequence thereof does hereby adjudge and accordingly order said Defendant, POLICE OFFICER FLOYD BOHLER, for good and sufficient reason (here designate punishment), and that this Order shall be effective upon the filing hereof, this _____ day of _____, 1982.

BOARD OF POLICE COMMISSIONERS
OF THE CITY OF ST. LOUIS, MISSOURI

By:_____

By:_____

By:_____

By:_____

ATTEST:

_____

BEFORE THE BOARD OF POLICE COMMISSIONERS OF
THE METROPOLITAN POLICE DEPARTMENT
CITY OF ST. LOUIS

File No: 80/446

In the Matter of St. Louis Metropolitan Police Department,
Plaintiff,

vs.

Police Officer Michael Lang,
Defendant.

DECISION
RECOMMENDED STATEMENT

This matter came up for hearing in the Board Room of the Police Headquarters Building on September 22, 1981 before MR. JOHN J. RILEY, Hearing Officer duly appointed by the Board of Police Commissioners, and COLONEL ROBERT F.

WINTERSMITH, Member of the Board of Police Commissioners, upon charges and specifications previously filed against POLICE OFFICER MICHAEL LANG and said Officer's plea of not guilty to said charges and specifications.

Both parties received reasonable notice of the issues involved and the time and place for hearing. Both parties were permitted timely process for the production of witnesses and documents. Each party was represented by counsel. At the hearing hereof, both parties presented oral and documentary evidence. During the hearing of the matter herein, the Department dismissed Charge 4 and the specifications thereto pending against OFFICER LANG. At the conclusion of all of the evidence, the entire matter was taken under submission for consideration by Hearing Officer RILEY. Subsequently, the Hearing Officer submitted Suggested Findings of Fact and Recommended Conclusions of Law in connection with the four charges and specifications thereto pending against POLICE OFFICER LANG to the Board. Thereafter, said Findings and Recommendation, the Charges and Specifications, and the full transcript, including all documentary evidence, of the proceedings were reviewed and duly considered by all of the Members of the Board of Police Commissioners. Upon due deliberation and consideration of the charges, the specifications thereto; the plea thereto and the proof adduced, the Board in reviewing the record as a whole, now makes its final decision, together with Findings of Fact, Conclusions of Law and its Order as set out herein below.

RECOMMENDED FINDINGS OF FACT

1. At all times mentioned in this matter, OFFICER MICHAEL LANG held a position of Police Officer with the St. Louis Metropolitan Police Department.

2. On August 19, 1980/August 20, 1980, POLICE OFFICER MICHAEL LANG was assigned to the 6th Police District, his

tour of duty at that time being the night watch from approximately 11:00 p.m. on August 19, 1980 to 7:00 a.m. on August 20, 1980.

3. That sometime, after 2:00 a.m. on August 20, 1980 and prior to 6:00 a.m. on August 20, 1980, OFFICER MICHAEL LANG consumed a quantity of beer in an area commonly known as "the small arms compound".

4. While on duty as described hereinabove, on August 20, 1980, sometime between 1:00 a.m. and 1:30 a.m. on August 20, 1980 POLICE OFFICER MICHAEL LANG consumed a quantity of beer in the general vicinity of Goodfellow and West Florissant Avenue in the City of St. Louis.

5. The area commonly known as "the small arms compound", located in the City of St. Louis, Missouri, was not within the geographical boundaries of that area assigned to POLICE OFFICER MICHAEL LANG while on his tour of duty from August 19, 1980 to August 20, 1980.

6. Sometime during the early morning hours of August 20, 1980 POLICE OFFICER MICHAEL LANG met and congregated with other police officers and persons not members of the Metropolitan Police Department in the area commonly known as "the small arms compound".

7. POLICE OFFICER MICHAEL LANG was assigned to Area #631 in the 6th Police District of the City of St. Louis on the dates stated hereinabove; said assignment consisting of the area bounded by West Florissant Blvd. to Bircher Blvd.; Wren Street to the City Limits, City of St. Louis.

8. Rule 9, Section 9.001(h) of the Police Manual, published July, 1970 by the Board of Police Commissioners prohibits "drinking of alcoholic beverages of any kind while on duty".

9. Rule 3, Section 3.108(d) of the Police Manual, published July, 1970 by the Board of Police Commissioners provides in

applicable part that an on-duty officer "....shall consistently patrol his beat, except when on special assignment. He shall not lounge, loaf, or gather with others at any place".

10. Rule 3, Section 3.108(b) of the Police Manual, published July, 1970, by the Board of Police Commissioners, provides in applicable part, that an on-duty officer "...shall confine his patrol within the limits of his beat, except in the arrest of a prisoner or other necessary absence, until the time fixed for the expiration of his tour of duty and he is properly relieved."

SUGGESTED CONCLUSIONS OF LAW

1. At all times mentioned in the Findings of Fact, the Defendant lawfully occupied the rank of Police Officer with the St. Louis Metropolitan Police Department and as a result thereof was within the lawful discipline of and government of the Department.

2. The Board of Police Commissioners of the City of St. Louis, Missouri, is possessed of the lawful power to make such rules and regulations consistent with law, for the government and discipline of the St. Louis Metropolitan Police Department.

3. Pursuant to this authority, the Board has promulgated and published rules of conduct in the Police Manual. Further, pursuant to that authority, the Board has promulgated and published in said Manual, Rule 7, setting forth complaint and disciplinary procedures and providing for the hearing of charges and specifications against members of the police force.

4. The hearing of the Charges and Specifications pending against POLICE OFFICER MICHAEL LANG was lawfully conducted pursuant to and in accordance with said Rule 7 of the Police Manual, and in accordance with Chapter 536 of the Revised Statutes of the State of Missouri.

5. As a result of the Defendant's aforesaid status and the aforesaid powers of the Board, the Board is possessed of the right to apply its reasonable judgment and discretion to the evidence adduced at the hearing of the matter herein and make Findings of Fact and enter a Judgment based thereon.

6. The Board has the right and power to affect that status of the Defendant by assessing (the punishment of...)

7. The Board was authorized and empowered to issue timely notice of the hearing hereof, to conduct the hearing, and to take and hear any and all evidence by the parties and to utilize all competent and material evidence in rendering its decision.

8. The Board, as an administrative agency of the State Government, has the right to apply its reasonable judgment and discretion, based upon its experience in the government and administration of the Department, and the evidence adduced at the trial of the Defendant herein, in determining the proper disposition of the status of the Defendant.

9. The Defendant was and is guilty of Charge 1, 2, and 3 of violating Rule 9, Section 9.001(h), Rule 3, Section 3.108(d) and Rule 3, Section 108(b) of the Police Manual, as set out in Charges 1, 2, and 3 and the Specifications thereto.

SUGGESTED ORDER

The Findings of Fact and Conclusions of Law aforesaid considered, the Board of Police Commissioners of the City of St. Louis, Missouri, does hereby decide that the Defendant, POLICE OFFICER MICHAEL LANG, is guilty of violation of Rule 9, Section 9.001(h) of the Police Manual as set out in Charge 1, Specification 1 and Specification 2; that said Police Officer is guilty of violation of Rule 3, Section 3.108(d) as set out in Charge 2 and Specification 1 thereto; and that said Police Officer is guilty of violation of Rule 3, Section 3.108(b) of the Police Manual as set out in Charge 3 and the Specification

thereto, and as a consequence thereof does hereby adjudge and accordingly order that said Defendant (here describe punishment); that this Order shall be effective upon the filing hereof, this _____ day of _____, 1982.

BOARD OF POLICE COMMISSIONERS
OF THE CITY OF ST. LOUIS, MISSOURI

By:_____

By:_____

By:_____

By:_____

ATTEST:

_____
Secretary to the Board

BEFORE THE BOARD OF POLICE COMMISSIONERS OF
THE METROPOLITAN POLICE DEPARTMENT
CITY OF ST. LOUIS

File No: 80/446

In the Matter of St. Louis Metropolitan Police Department,
Plaintiff,

vs.

Probationary Police Officer Linda Hinton,
Defendant.

DECISION
RECOMMENDED STATEMENT

This matter came up for hearing in the Board Room of the Police Headquarters Building on September 22, 1981 before MR JOHN J. RILEY, Hearing Officer, duly appointed by the Board of Police Commissioners, and COLONEL ROBERT F. WINTERSMITH, Member of the Board of Police Commissioners, upon charges and specifications previously filed against Probationary Police Officer LINDA HINTON and said Officer's plea of not guilty to said charges and specifications.

Both parties received reasonable notice of the issues involved and the time and place for hearing. Both parties were permitted timely process for the production of witnesses and documents. Each party was represented by counsel. At the hearing hereof, both parties presented oral and documentary evidence. At the conclusion of all of the evidence, the entire matter was taken under submission for consideration by Hearing Officer RILEY. Subsequently, the Hearing Officer submitted Suggested Findings of Fact and Recommended Conclusions of Law in connection with the three charges and specifications thereto pending against Probationary Officer, LINDA HINTON to the Board. Thereafter, said Findings and Recommendations, the Charges and Specifications, and the full transcript, including all documentary evidence, of the proceedings were reviewed and duly considered by all of the Members of the Board of Police Commissioners. Upon due deliberation and consideration of the charges, the specifications thereto; the plea thereto and the proof adduced, the Board in reviewing the record as a whole, now makes its final decision, together with Findings of Fact, Conclusions of Law and its Order as set out herein below.

RECOMMENDED FINDINGS OF FACT

1. At all times mentioned in this matter, Probationary Officer LINDA HINTON held the position of Probationary Police Officer with the St. Louis Metropolitan Police Department.

2. On August 19/August 20, 1980, Probationary Officer Hinton was assigned to the 6th Police District in the City of St. Louis.

3. On the above dates, her tour of duty was from 11:00 p.m. August 19, 1980 to 7:00 a.m. August 20, 1980; during that time she was assigned to beat #629 consisting of the area bounded by Bircher and West Florissant Blvds. Kingshighway and Emerson Avenue in the ????

4. The area commonly known as "the small arms compound" in the City of St. Louis is not within the geographic boundaries described as beat #629, to which Probationary Officer HINTON was assigned on the date stated hereinabove.

5. At some time between 2:00 a.m. and 6:00 a.m. on August 20, 1980, Probationary Officer LINDA HINTON consumed a quantity of beer at the location commonly known as "the small arms compound" in the City of St. Louis.

6. At a crtain time between 2:00 a.m. and 6:00 a.m. on August 20, 1980, Probationary Officer LINDA HINTON met and gathered with other personnel of the Metropolitan Police Department and individuals not members of the Department in the area commonly known as "the small arms compound".

7. In the early morning hours of August 20, 1980, Probationary Police Officer HINTON left her assigned beat area without permission, excuse, cause or justification.

8. Rule 9, Section 9.001(h) of the Police Manual, published July, 1970, by the Board of Police Commissioners, prohibits in applicable part "drinking of alcoholic beverages of any kind while on duty".

9. Rule 3, Section 3.108(d) of the Police Manual, published July, 1970 by the Board of Police Commissioners, provides in applicable part that an on-duty officer: "...shall consistently patrol his beat, except when on special assignment. He shall not lounge, loaf, or gather with others at any place".

10. Rule 3, Section 3.108(b) of the Police Manual, published July, 1970, by the Board of Police Commissioners, provides in applicable part, that an on-duty officer: "....shall confine his patrol within the limits of his beat, except in the arrest of a prisoner or other necessary absence, until the time fixed for the expiration of his tour of duty and he is properly relieved."

SUGGESTED CONCLUSIONS OF LAW

1. At all times mentioned in the Findings of Fact, the Defendant lawfully occupied the rank of Probationary Officer with the St. Louis Metropolitan Police Department and as a result thereof was within the lawful discipline of and government of the Department.

2. The Board of Police Commissioners of the City of St. Louis, missouri, is possessed of the lawful power to make such rules and regulations consistent with law, for the government and discipline of the St. Louis Metropolitan Police Department.

3. Pursuant to this authority, the Board has promulgated and published rules of conduct in the Police Manual. Further, pursuant to that authority, the Board has promulgated and published in said Manual, Rule 7, setting forth complaint and disciplinary procedures and providing for the hearing of charges and specifications against members of the police force.

4. The hearing of the Charges and Specifications pending against Probationary Police Officer LINDA HINTON was lawfully conducted pursuant to and in accordance with said Rule 7 of the Police Manual, and in accordance with Chapter 536 of the Revised Statutes of the State of Missouri.

5. As a result of the Defendant's aforesaid status and the aforesaid powers of the Board, the Board is possessed of the right to apply its reasonable judgment and discretion to the evidence adduced at the hearing of the matter herein and make Findings of Fact and enter a Judgment based thereon.

6. The Board has the right and power to affect that status of the Defendant by assessing (the punishment of....).

7. The Board was authorized and empowered to issue timely notice of the hearing hereof, to conduct the hearing, and to take and hear any and all evidence by the parties and to utilize all competent and material evidence in rendering its decision.

8. The Board, as an administrative agency of the State Government, has the right to apply its reasonable judgment and discretion, based upon its experience in the government and administration of the Department, and the evidence adduced at the trial of the Defendant herein, in determining the proper disposition of the status of the Defendant.

9. The Defendant, Probationary Police Officer, LINDA HINTON, was and is guilty of Charges 1, 2 and 3 of violating Rule 9, Section 9.001(h), Rule 3, Section 3.108(d) and Rule 3, Section 3.108(b) of the Police Manual, as set out in Charges 1, 2 and 3 and their Specifications.

SUGGESTED ORDER

The Findings of Fact and Conclusions of Law aforesaid considered, the Board of Police Commissioners of the City of St. Louis, Missouri, does hereby decide that the Defendant, Probationary Police Officer, LINDA HINTON, is guilty of violation of Rule 9, Section 9.001(h) of the Police Manual as set out in Charge 1 and its Specifications; that said Probationary Police Officer is guilty of violation of Rule 3, Section 3.108(d) of the Police Manual, as set out in Charge 2 and its Specification and that said Probationary Police Officer Linda Hinton is guilty of violation of Rule 3, Section 3.108(b) of the Police Manual as set out in Charge 3 and its Specifications, and as a consequence thereof does hereby adjudge and accordingly order that said Defendant, Probationary Police Officer LINDA HINTON, for good and sufficient reason (here state punishment) and that this Order shall be effective upon the filing hereof this _____ day of _____ 1982.

BOARD OF POLICE COMMISSIONERS
OF THE CITY OF ST. LOUIS, MISSOURI

By:_____

By:_____

By:_____

By:_____

ATTEST:

_____
Secretary to the Board

BEFORE THE BOARD OF POLICE COMMISSIONERS OF
THE METROPOLITAN POLICE DEPARTMENT
CITY OF ST. LOUIS

File No: 80/446

In the Matter of St. Louis Metropolitan Police Department,
Plaintiff,

vs.

Probationary Police Officer Roy Simmons,
Defendant.

DECISION
RECOMMENDED STATEMENT

This matter came up for hearing in the Board Room of the Police Headquarters Building on September 22, 1981 before MR. JOHN J. RILEY, Hearing Officer duly appointed by the Board of Police Commissioners, and COLONEL ROBERT F.

WINTERSMITH, Member of the Board of Police Commissioners, upon charges and specifications previously filed against Probationary POLICE OFFICER ROY SIMMONS and said Officer's plea of not guilty to said charges and specifications.

Both parties received reasonable notice of the issues involved and the time and place for hearing. Both parties were permitted timely process for the production of witnesses and documents. Each party was represented by counsel. At the hearing hereof, both parties presented oral and documentary evidence. During the hearing of the matter herein, the Department dismissed Charge 5 and the specifications thereto pending against Probationary POLICE OFFICER ROY SIMMONS. At the conclusion of all of the evidence, the entire matter was taken under submission for consideration by Hearing Officer RILEY. Subsequently, the Hearing Officer submitted Suggested Findings of Fact and Recommended Conclusions of Law in connection with the four charges and specifications thereto pending against PROBATIONARY POLICE OFFICER ROY SIMMONS to the Board. Thereafter, said Findings and Recommendation, the Charges and Specifications, and the full transcript, including al documentary evidence, of the proceedings were reviewed and duly considered by all of the Members of the Board of Police Commissioners. Upon due deliberation and consideration of the charges, the specifications thereto; the plea thereto and the proof adduced, the Board in reviewing the record as a whole, now makes its final decision, together with Findings of Fact, Conclusions of Law and its Order as set out herein below.

RECOMMENDED FINDINGS OF FACT

1. At all times mentioned in this matter, ROY SIMMONS held the position of Probationary Police Officer with the St. Louis Metropolitan Police Department.

2. On August 19/August 20, 1980, between the hours of 11:00 p.m. on August 19, 1980 and 7:00 a.m. on August 20, 1980, Probationary Officer SIMMONS was assigned to the 6th Police District in the City of St. Louis.

3. On the above date, at the above stated time, Probationary Police Officer SIMMONS' beat number was 631, which consists of the area bounded by West Florissant Blvd. to Bircher; Wren to the City Limits of the City of St. Louis.

4. The area within the City of St. Louis commonly known as "the small arms compound" is not within the geographic boundaries of the above-described beat.

5. That sometime, between 2:00 a.m. and 6:00 a.m. on August 20, 1980, Probationary Officer SIMMONS consumed a quantity of beer in the area commonly known as "the small arms compound".

6. That sometime between 1:00 a.m. and 1:30 a.m. Probationary Officer SIMMONS consumed a quantity of beer at or near the intersection of Goodfellow and West Florissant Avenue in the City of St. Louis.

7. At sometime in the early morning hours of August 20, 1980, Probationary Officer SIMMONS left his assigned beat area and gathered with and met with other members of the Police Department in the area commonly known as "the small arms compound" of the City of St. Louis.

8. At sometime during the morning hours of August 20, 1980, Probationary Officer SIMMONS left his assigned patrol area without permission, excuse or justification and met with other officers of the Department and non-Department personnel in the area known as "the small arms compound" in the City of St. Louis.

9. Sometime in the early morning hours of August 20, 1980, Probationary Officer SIMMONS operated a vehicle assigned to

Police Officer THOMAS SCHULTE in picking up Department mail at several District stations and delivering said mail to the Headquarters Building.

10. The assignment to pick up and deliver mail had been given to Police Officer SCHULTE.

11. The above-described change in duty assignment took place without the knowledge or permission of the supervisor of the two officers named herein.

12. Rule 9, Section 9.001(h) of the Police Manual, published July, 1970 by the Board of Police Commissioners prohibits "drinking of alcoholic beverages of any kind while on duty".

13. Rule 3, Section 3.108(d) of the Police Manual, published July, 1970 by the Board of Police Commissioners provides in applicable part that an on-duty officer "....shall consistently patrol his beat, except when on special assignment. He shall not lounge, loaf, or gather with others at any place".

14. Rule 3, Section 3.108(b) of the Police Manual, published July, 1970 by the Board of Police Commissioners, provides in applicable part, that on-duty officers "....shall confine his patrol within the limits of his beat, except in the arrest of a prisoner or other necessary absence, until the time fixed for the expiration of his tour of duty and he is properly relieved".

15. Rule 7, Section 7.010(d) of the Police Manual, published July, 1970 by the Board of Police Commissioners, in applicable part prohibits any "conduct contrary to the good order and discipline of the Department".

SUGGESTED CONCLUSIONS OF LAW

1. At all times mentioned in the Findings of Fact, the Defendant lawfully occupied the rank of Probationary Police Officer with the St. Louis Metropolitan Police Department and as a result thereof was within the lawful discipline of and government of the Department.

2. The Board of Police Commissioners of the City of St. Louis, Missouri, is possessed of the lawful power to make such rules and regulations consistent with law, for the government and discipline of the St. Louis Metropolitan Police Department.

3. Pursuant to this authority, the Board has promulgated and published in said Manual, Rule 7, setting forth complaint and disciplinary procedures and providing for the hearing of charges and specifications against members of the police force.

4. The hearing of the Charges and Specifications pending against PROBATIONARY OFFICER ROY SIMMONS was lawfully conducted pursuant to and in accordance with said Rule 7 of the Police Manual, and in accordance with Chapter 536 of the Revised Statutes of the State of Missouri.

5. As a result of the Defendant's aforesaid status and the aforesaid powers of the Board, the Board is possessed of the right to apply its reasonable judgment and discretion to the evidence adduced at the hearing of the matter herein and make Findings of Fact and enter a Judgment based thereon.

6. The Board has the right and power to affect that status of the Defendant by assessing (the punishment of...).

7. The Board was authorized and empowered to issue timely notice of the hearing hereof, to conduct the hearing, and to take and hear any and all evidence by the parties and to utilize all competent and material evidence in rendering its decision.

8. The Board, as an administrative agency of the State Government, has the right to apply its reasonable judgment and discretion, bsaed upon its experience in the government and administration of the Department, and the evidence adduced at the trial of the Defendant herein, in determining the proper disposition of the status of the Defendant.

9. The Defendant, Probationary Officer ROY SIMMONS was and is guilty of Charges 1, 2, 3 and 4 of violating Rule 9,

Section 9.001(h), Rule 3, Section 3.108(d), Rule 3, Section 3.108(b) and Rule 7, Section 7.010(d) of the Police Manual as set out in Charges 1, 2, 3 and 4 and the Specifications thereto.

SUGGESTED ORDER

The Findings of Fact and Conclusions of Law aforesaid considered, the Board of Police Commissioners of the City of St. Louis, Missouri, does hereby decide that the Defendant, Probationary Police Officer ROY SIMMONS, is guilty of violation of Rule 9, Section 9.001(h) of the Police Manual as set out in Charge 1 and its Specifications; that said Probationary Police Officer is guilty of violation of Rule 3, Section 3.108(d) of the Police Manual as set out in Charge 2 and its Specification; that said Probationary Police Officer is guilty of violation of Rule 3, Section 3.108(b) of the Police Manual as set out in Charge 3 and its Specification; that said Probationary Police Officer is guilty of violation of Rule 7, Section 7.010(d) of the Police Manual as set out in Charge 4 and its Specification and as a consequence thereof does hereby adjudge and accordingly order that said Defendant, Probationary Police Officer ROY SIMMONS, for good and sufficient reason (here set out punishment) and that this Order shall be effective upon the filing hereof this _____ day of _____, 1982.

BOARD OF POLICE COMMISSIONERS
OF THE CITY OF ST. LOUIS, MISSOURI

By:_____

By:_____

By:_____

By:_____

ATTEST:

_____
Secretary to the Board

APPENDIX B

IN THE CIRCUIT COURT CITY OF ST. LOUIS

Thomas Schulte et al.,

vs.

Homer E. Sayad, et al.

No. 824-00143 Room 3 January 17, 1983

MEMORANDUM FOR CLERK

This cause was previously called, argued, briefed, and taken under submission.

Upon a consideration and review of the entire record before the Board of Police Commissioners of the City of St. Louis, this Court determines that the findings, decisions, and orders of the Commission are based upon competent and substantial evidence on the record as a whole, and the decisions and orders of such Commission are hereby affirmed.

James J. Gallagher, Judge
Division 22 - 622-4786

Copies: David O. Danis, Attorney-at-Law
C. John Pleban, Attorney-at-Law

APPENDIX C

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

DIVISION TWO

No. 46858

Appeal from the Circuit Court of St. Louis City
Honorable James J. Gallagher
OPINION FILED: January 31, 1984

Thomas Schulte, Michael Lang, Floyd Bohler, Roy Simmons and Linda Hinton,

Appellants,

vs.

Homer E. Sayad, Charles Valier, Thomas W. Purcell, Robert F. Wintersmith and Mayor Vincent C. Schoemehl, Jr., comprising the Board of Police Commissioners, St. Louis, Missouri,

Respondents.

Appeal from a circuit court order affirming the decision of the Board of Police Commissioners of the City of St. Louis dismissing appellant-officers from the police force for violations of police department's rules and regulations. We affirm.

The evidence, consisting largely of statements made by appellants under police department questioning, tended to show each appellant, while on duty, left his or her assigned beat, and went to a non-duty area known as the Small Arms Plant where they consumed alcohol (beer). Other violations of the police department's regulations were charged and found, but are not deemed important to the disposition of this appeal.

The seminal issue is whether police department coudl use the appellants' individual statements as a basis for their dismissal. Each appellant was advised before questioning of his or her "internal affairs rights" by the following statement:

> I wish to advise you that you are being questioned as part of an official investigation of the Police Department. You will be asked questions specifically directed and narrowly related to the performance of your official duties or fitness for office. You are entitled to all the rights and privileges guaranteed by the laws and the constitution of this State and the Constitution of the United States, including the right not to be compelled to incriminate yourself. I further wish to advise you that is you refuse to testify or to answer questions related to the performance of your official duties or fitnesses for duty, you will be subject to departmental charges which could result in your dismissal from the Police Department. If you do answer, neither your statements or any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceedings. However, these statements may be used against you in relation to subsequent department charges.

It is contended the statements, because made under a threat of loss of employment, were "coerced" and therefore inadmissible.

A police officer can be required on pain of dismissal, to make statements concerning his official duties, even if those statements would tend to incriminate him. Such statement cannot be used in criminal prosecution, but may be used in disciplinary proceedings if the officer is informed of that immunity. Cox v. McNeal, 577 S.W.2d 881, 888 (Mo.App. 1979); Worley v. Whaley, 586 S.W.2d 721, 722 (Mo.App.1979).

Appellants were informed their answers could not be used against them in "subsequent criminal proceedings," and the questions were narrowly and specifically duty-related. The statements could properly be used in disciplinary proceedings. *Worley, supra.*

Appellants' Points Relied On II and III are affirmed in accordance with Rule 84.16 (b). These points are the judgment was not supported by competent evidence on the whole record, and the regulations under which appellants were charged (3.108 (b)(d); 7.010 (d)) were vague, indifferent, uncertain and contradictory. The judgment is supported by substantial evidence on the whole record, and is not against the weight of the evidence. No error of law appears. An extended opinion would have no precedential value.

Judgment affirmed.

ROBERT E. CRIST, PRESIDING JUDGE

JAMES A. PUDLOWSKI, Judge Concurs

PAUL J. SIMON Judge Concurs

APPENDIX D

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

TO: ATTORNEYS OF RECORD
FROM: JAMES A. ROCHE, JR., Clerk
DATE: MARCH 8, 1984

Please be advised that the following Motions For Rehearing and/or Transfer to the Supreme Court have been DENIED as of March 8, 1984:

44067	James Jarrell, et al. vs. Fort Worth Steel & Machinery
45750	State of Missouri vs. Charles Roos
45853	Alice J. Hagan, etc., et al., vs. Paris & Osbourne Chevrolet, et al.
45926	Kenneth Nappier, et al. vs. Emmett Kincade, et al.
46001	Maryann Hunt, etc., et al., vs. Guarantee Elec. Co. of St. Louis
46099	Hamilton Music, Inc. vs. Gordon Gundaker Real Estate, et al.
46304	Denver J. Stamps, et al. vs. Southwestern Bell Telephone
46315	Alvin Aldrich Hansome vs. Northwestern Cooperage Co., et al.
46432	Mark Alan Stucker vs. Staci Leigh Stucker
46588	Cobie Shinauld vs. Mound City Yellow Cab Co.
46645	State of Missouri vs. Janet Johnson
46698	State of Missouri vs. Roy Henderson
46717	Barry Goodman vs. St. Louis Auto Auction
46726	Barbara L. Anderson vs. Wm Anderson
46792	State of Missouri vs. Darnell F. Mosby
46810	Presbytery of Elijah Parish Lovejoy, etc., et al. vs. Paul Jaeggi, et al.
46839	State of Missouri vs. Warren Lamont Wynn

46858	Thomas Schulte, et al. vs. Homer Sayad, et al.
46869	Dennis Ray Sauer vs. Susan Marie Sauer Newman
46872	Nathaniel Wade vs. State of Missouri
46897	State of Missouri vs. Sterling Dickens
46898	State of Missouri vs. Helen Angela Martin
47029	Wilbert Ashworth, et al. vs. Charles Schneider, Assessor
47335	Amer. Federation of School Adm., et al. vs. St. Louis Public Schools, etc., et al.
45965	Bernhardt W. Klippel, Jr. vs. John Watkins, Jr., et al.
46231	James Alexander vs. Dwayne Bergmann, M. D.
46955	State of Missouri vs. Donald Robertson
47075	Gen. Aggregate Corp. vs. Don LaBrayerer

Please be advised that the following Motion for Rehearing has been DENIED AS FILED OUT OF TIME as of March 8, 1984:

46701	Fred W. Huska vs. Rita J. Huska

APPENDIX E

IN THE SUPREME COURT OF MISSOURI

ED #46858

January Session 1984

Thomas Schulte, et al.,
Appellants,
vs. TRANSFER
Homer E. Sayad, et al.,
Respondents.

Now at this day, on consideration of appellants' application to transfer the above entitled cause from the Eastern District Court of Appeals, it is ordered that said application be, and the same is hereby denied.

STATE OF MISSOURI—SCT.

I, THOMAS F. SIMON, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the January Session thereof, 1984, and on the 16th day of April 1984, in the above entitled cause.

Given under my hand and seal of said Court, at the City of Jefferson City, this 16th day of April 1984.
Thomas Simon Clerk.
D. C.